

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

SERVICE EMPLOYEES INTERNATIONAL)	
UNION, LOCAL 96, AFL-CIO)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 80-021
)	
HICKMAN MILLS SCHOOL DISTRICT)	
CONSOLIDATED SCHOOL DISTRICT NO. 1,)	
KANSAS CITY, MISSOURI)	
)	
Respondent.)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the Service Employees' International Union, Local 96, AFL-CIO, filing an objection to conduct affecting an election held on August 13, 1980. Local 96 has objected to the conduct of Consolidated School District #1 of Hickman Mills, Missouri (hereinafter Employer), contending that said conduct is sufficient to set aside the election. The chairman, pursuant to 8 CSR 40-2.160 (9), investigated Local 96's objections and determined that a hearing was necessary to resolve the substantial and material factual issues raised by the objections. On October 29, 1980, a hearing was held in Independence, Missouri, at which representatives of Local 96 and the Employer were present. The case was heard by the Chairman, one employer member and one employee member of the Board. The State Board of Mediation is authorized to hear and decide issues concerning objections to elections by virtue of 8 CSR 40-2.160 (9).

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

On August 13, 1980, an election was held to determine if the custodial employees of the Employer desired Local 96 to be their exclusive public employees' representative. The election resulted in a 34-34 tie. An August 26, 1980, Local 96 filed a timely objection to conduct affecting an election. Local 96 alleged the Employer (1) failed to post the proper election notices; (2) omitted an employee from its list of eligible employees; (3) threatened employees; and (4) allowed a supervisor to serve as an election observer.

The facts, as they relate to each objection, are as follows:

1. William Koelling, Employer's Assistant Supervisor of Business and Administration, testified that he, along with Robert Sharp, Director of Buildings and Grounds, posted the election notice in the custodian's room of Burke Elementary School on July 15, 1980. Records were kept of the date and time each notice was posted in the schools throughout the District. Testimony of Mr. Sharp established that he posted a notice in the custodial room by taping it to the wall next to a workbench and the time-in/time-out sheet. The only conflicting evidence offered by Local 96 was that Glenn Daugherty, custodian at the school, saw the notice of election folded up, lying atop a box of supplies in the custodian's room. In short, there is no evidence that the Employer failed to post the required notice. Instead, the record shows that notice was posted and remained in the custodial room until the election, even though the notice may have fallen or have been otherwise removed from the wall shortly before the election.

2. Local 96's second objection involved a challenged ballot of one Joseph Travis, whose name was inadvertently omitted from a list of eligible voters provided by the Employer. When Travis arrived to cast his vote, neither the Employer nor Local 96 challenged his eligibility. Noticing that Travis was not among the list of eligible voters, Chairman Berry allowed Travis to cast a challenge ballot in accordance with 8 CSR 40-2.160 (2). That rule provides that a challenge ballot will be counted only if it will affect the result of the election. Because Travis' vote could affect the election outcome, Chairman Berry had to make a determination of Travis's eligibility. A telephone call to Employer's administrative office established that Travis was a long-time employee, and was inadvertently omitted from the list of eligible voters because he had been transferred to another school shortly before the election. After determining that Travis was indeed an eligible voter, Chairman Berry asked Local 96's and the Employer's observers if they objected to the opening of the ballot. Neither objected. The ballot was opened, resulting in a 34-34 tie.

3. Local 96 contends that the Employer threatened employees prior to the election by informing them that should the Union be certified the Employer would subcontract out the custodial work. Two custodians (Bruce Scarborough and Don Morris) testified to having conversations with their supervisors wherein the supervisors indicated that the Employer would "look into" subcontracting custodial work if the Union won the election. Another custodian (David Walker), testified to speaking to other employees who were aware of the possibility of the Employer subcontracting the custodial work. No employees testified as to being intimidated by such a possibility because they were aware of the prohibitive cost of subcontracting work.

4. Local 96 contends that the Employer's election observer is a supervisor over an employee voting in the election. The employee, Steve Rezendez, was a part-

time custodian working at both the media center and the central office at the time of the election. The observer in question, Earl Yuille, is the building administrator of the media center. Prior to and at the time of the election, Rezendez divided his working time between the media center and the central office. During this period, Rezendez was evaluated twice by William Koelling, and was considered by Rezendez as his supervisor at the time of the election. Rezendez admitted that he was in no way intimidated by Yuille's presence when he cast his ballot.

CONCLUSIONS OF LAW

Local 96 prays that August 13, 1980 election be set aside based on four objections. Each objection will be dealt with separately below in the order asserted.

1. Local 96 contends that the election should be set aside because the Employer failed to post a notice of election in the Burke Elementary School as required by 8 CSR 40-2.150 (1). Local 96, as the objecting party, has the burden of proof regarding all matters alleged in the objections. 8 CSR 40-2.160 (9). Clearly, Local 96 has not met their burden as proving that the Employer failed to post notice of election. To the contrary, the record indicates that the notice was posted as required. Accordingly, the objection must be rejected.

2. Local 96's second objection involves the Employer's inadvertent omission of an employee from the list of eligible voters supplied to the Board prior to the election. Local 96 contends that the non-compliance with the notice requirement justifies setting aside the election and cites NLRB decisions which have set aside elections because of the failure of Employer to provide complete employee lists. Although the Board recognizes the importance of providing a complete list of eligible employees, the inadvertent omission of one name does not require the setting aside of the election in this case. The Board must point out that the NLRB requires only a substantial

compliance with the employee list requirement and has sustained elections in which minor omissions were found, not attributable to the Employer's gross negligence or bad faith. See *David R. Brothman Memorial Hospital*, 217 NLRB No. 89, 89 LRRM 1055 (1975). In our case it is clear that neither gross negligence nor bad faith were present. Another factor important to rejecting Local 96's second objection is that the Union observer chose not to challenge the omitted employee's ballot before his vote was counted. Only after it was determined that the vote was against the Union was the voter's eligibility challenged. The Union's observer had good cause to challenge the employee's eligibility to vote after it was known that said employee was not on the list of eligible voters. However, Local 96's observer failed to do so. Local 96 cannot now challenge the vote after failing to do so when presented the opportunity at the time the ballot was cast.

3. Local 96's third objection involves alleged Employer threats that the School district would subcontract custodial work in the event the Union should win. The Union contends that the threats constituted unlawful interference with the public employees' collective bargaining rights in violation of Section 105.510, RSMo 1979. The only evidence offered by the Union was that two custodians had conversations with supervisors wherein the mere possibility of "looking into" the subcontracting out of the custodial work should the Union be certified. No one testified as to being intimidated by the discussions. The Union cites in support of its objection several Federal and State cases in which courts have overturned elections because of similar threats. However, all the cases cited by the Union involved employers who were guilty of much more than the casual mentioning of the possibility of subcontracting. In each case, there existed other anti-union action such as threatened discharges, employee interrogations, firing of Union sympathizers, etc. In those cases, the Courts have held that the Employer's

conduct as a whole had destroyed the laboratory conditions necessary for an election. In our case there is no evidence of any additional anti-union actions taken by the Employer, and it is clear that no employee was intimidated by the possibility of subcontracting the work. Consequently, Local 96's objection is rejected.

4. In its fourth objection, Local 96 asserts that the election should be set aside because the Employer observer, Earl Yuille, is a supervisor. Designating a supervisor as an election observer is contrary to the Board rule which provides that the observers must be non-supervisory employees of the public Employer. 8 CSR 40-2.160 (1). Despite the use of a supervisor as an observer, the record shows that the one employee (Rezendez) who may have been under the supervision of the observer freely admitted that his vote was in no way influenced by the presence of Yuille. Consequently, noncompliance with the Board rule is not, given the facts of the case, justification for setting aside the election.

For all the forgoing reasons, Local 96's objections to the conduct of election and conduct affecting the election are overruled.

Signed this 7th day of January, 1981.

MISSOURI STATE BOARD OF MEDIATION

(S E A L)

/s/ Conrad L. Berry
Conrad L. Berry, Chairman

/s/ Robert Missey
Robert Missey, Employee Member

/s/ Herbert Shaw
Herbert Shaw, Employer Member